IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

WRIT PETITION NO : 22620 of 1994

Between:

C.Shankara Naidu, S/o. Chinna Kannayya Naidu.
R/o. Chekuruvaripalle, Bangaru Palyam Mandal,
Chittoor.

..... PETITIONER

AND

1 Union of India, Rep. Secretary to Govt.,

Ministry of Defence, Seva Bhavan, New Delhi.
2 The Adjutant General, Personnel Services Directorate (PS4)
Adjutant General's Branch, Army Headquarters,
DHQ P.O., New Delhi 110 001.
3 The Controller of Defence Accounts (Pensions) Allahabad, U.P.
4 The Officer-in-charge, Madras Regiment Abilekha Karyalaya Records,
The Madras Regiment Post.Box.No.1, Wellington (Nilgiris) 643 231.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, order or direction preferably one in the nature of Writ of Mandamus declaring that (1) discharge of the petitioner from military service on the alleged medical grounds 'anxiety state' w.e.f. 24/10/1969 by the orders of an incompetent authority and without jurisdiction i.e., other than the Central Government is illegal, invalid and as in contravention to Rules 15 and 15-A of the Army Rules, 1954 and in consequence thereof the petitioners is entitled to the relief of appropriate compensation in lieu of his loss of service of 14 years (on the basis of minimum 22 years) on account of his being illegally discharged from service, in terms of salary and other emoluments that may be entitled to and which he would have earned if they were not illegally discharged, and (2) that the petitioners is entitled to receive all his terminal benefits like pension and other emoluments etc., as may be fixed on such last pay that he would have been drawing on completion of qualifying 22 years of service.

Counsel for the Petitioner: MR.M.VENKATRAM REDDY
Counsel for the Respondents: Mr.T.Ramulu, S.C. for C.G.

The Court made the following:

ORDER:

This writ petition is filed challenging the discharge of the petitioner from Military service on the medical ground of 'anxiety state' with effect from 24.10.1969 and for consequential direction to the respondents to pay appropriate compensation in view of loss of service.

2. The case of the petitioner is that he was enrolled in the Army on 09.01.1962 and discharged on 24.10.1969 on the ground that he was medically categorized as E.E.E and that the said discharge is illegal and contrary to law. He also submitted that he, in any way, is entitled for pension prorata on the basis of services rendered and consequently on the medical discharge from the Army.

3. I am afraid at the threshold, I am not inclined to adjudicate the matter on merits. Admittedly, the petitioner was discharged from service on 24.10.1969 and he filed an appeal before the Government after seven years and the same was rejected on 14.03.1978 stating that the appeal was hopelessly barred by time. Even after the rejection by the Government, the petitioner approached this Court in 1994 after lapse of sixteen years. No reasons are forthcoming in the affidavit as to why he approached this Court at such a belated stage.

4. The learned counsel for the petitioner, however, tried to convince this Court that on account of his poor financial conditions, the petitioner could not approached this Court immediately. This is not a valid reason to convince this Court to proceed with the matter on merits. However, the good case it may be, but on account of laches and unexplained delays on the part of the petitioner, the case has to be rejected. The learned counsel further tries to draw the assistance from a Division Bench of the Rajastan High Court reported in **EMNA v. UNION OF INDIA ,** wherein the Division Bench observed that the delay and laches would not defeat the pension claim. In the instant case, what is being challenged is the order of discharge, dated 24.10.1969, it is nearly 45 years

after the discharge effected by the Army. I find that the challenge is wholly unsustainable as there are clear and unexplained laches on the part of the petitioner. Even, while filing the appeal before the Government, there was a delay of seven years and even after disposal of the appeal, there is a delay of sixteen years in approaching this Court. As there are laches on the part of the petitioner, it is not appropriate to challenge at this juncture to reopen the entire matter nearly after a half century. Thus, I am inclined to dismiss the writ petition without going into the merits of the case.

5. Accordingly, the writ petition is dismissed. No order as to costs.

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G.BIKSHAPATHY, J

Dated 07th October, 2004.

YCR

To

1. The Secretary to Government, Union of India,

Ministry of Defence, Seva Bhavan, New Delhi.
2. The Adjutant General, Personnel Services Directorate (PS4)
Adjutant General's Branch, Army Headquarters,
DHQ P.O., New Delhi 110 001.
3. The Controller of Defence Accounts (Pensions) Allahabad, U.P.
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5. 2 C.D. copies.